

**BEFORE THE MONTGOMERY COUNTY
BOARD OF APPEALS**

**OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
Stella B. Werner Council Office Building
Rockville, Maryland 20850
(240) 777-6660**

IN THE MATTER OF:
EMILIOS DIMITRIADIS
Petitioner

Emilios Dimitriadis

For the Petition

Lynn McCreary

Department of Housing and
Community Affairs

Before: Lynn A. Robeson, Hearing Examiner

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Board of Appeals Case No. S-2853
(OZAH Case No. 13-02)

HEARING EXAMINER'S REPORT AND RECOMMENDATION

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I. STATEMENT OF THE CASE

Petition No. S-2853, filed on July 17, 2012, seeks a special exception pursuant to §59-G-2.00 of the Zoning Ordinance to permit an accessory apartment in the basement of an existing single-family home located at 10349 St. Albans Drive, Bethesda, Maryland. The property's legal description is Wildwood Manor, and is further identified as Lot 8, Block 11, Tax Account Number 07-00696812. The property is classified within the R-90 Zone.

On July 24, 2012, OZAH noticed the public hearing on the petition for January 3, 2013. Exhibit 11(b). Technical Staff of the Maryland-National Capital Park and Planning Commission (M-NCPPC), in a report issued December 3, 2012, recommended approval of the special exception, with conditions. Exhibit 14.¹ The Department of Housing and Community Affairs (DHCA) inspected the property on December 18, 2012. Housing Code Inspector Lynn McCreary reported her findings in a memorandum of the same date (Exhibit 15). She determined that the apartment contained 451 square feet of habitable space, and the unit would allow for the occupancy of no more than two unrelated people or a family of three. Also submitted by DHCA was a memorandum dated December 20, 2012, from Ada DeJesus indicating that there are three accessory apartments in the area. Exhibit 17.

The public hearing proceeded as scheduled on January 3, 2012. At the public hearing, the Petitioner testified that he co-owned the property with his brother, Sokratis Dimitriadis. The Hearing Examiner left the record open until January 14, 2013, to permit the Petitioner's brother to submit a statement that consented to the filing of the petition and agreed to be bound by all conditions of approval. T. 28. Mr. Dimitriadis submitted this letter on January 7, 2012 (Exhibit 21), and the record closed on January 14, 2012.

Based on the record, the Hearing Examiner finds that the petition meets all of the statutory

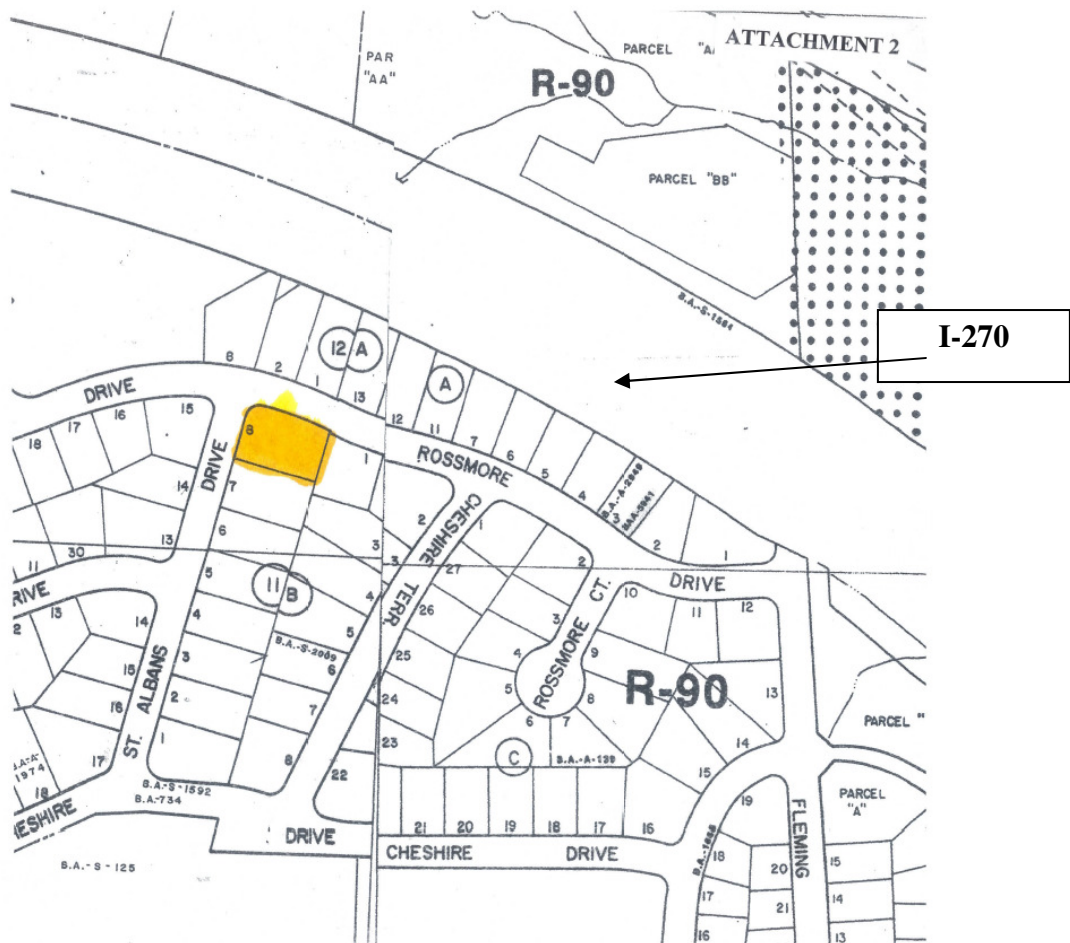
¹ The Technical Staff report is frequently quoted and paraphrased herein. The report pages were not numbered, so the Hearing Examiner's references to page numbers are by physical count.

criteria, provided the Petitioner complies with certain conditions of approval included in Section V. of this Report.

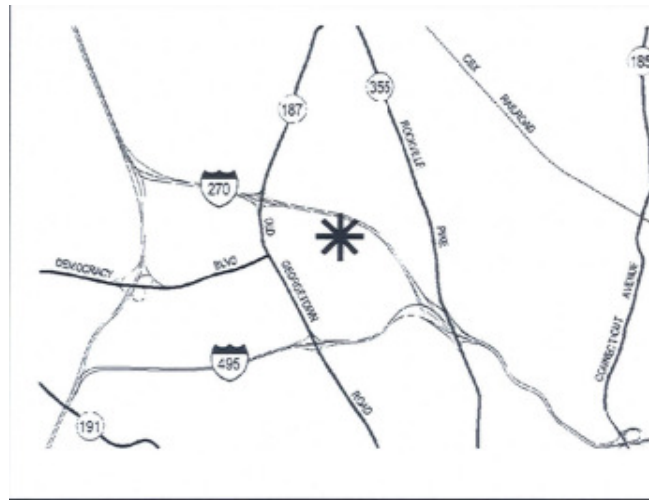
II. FACTUAL BACKGROUND

A. The Subject Property and the Neighborhood

The subject property is described as Lot 8, Block 11 of the Wildwood Manor Subdivision, and is located in the southeast quadrant of the intersection of St. Albans and Rossmore Drives, just south of I-270. The location of the property is shown on an excerpt from the Zoning Map included in the Technical Staff Report (Exhibit 14, Attachment 2).



A vicinity map showing the location of the subject property is shown on page 1 of the Technical Staff Report (Exhibit 14):



The subject property contains approximately 15,559 square feet in the R-90 Zone and is improved with a single-family dwelling constructed in 1959. Staff reports that the dwelling is setback 27 feet from St. Albans Drive and 32 feet from Rossmore Drive. Exhibit 14, p. 2. Staff advises that the driveway is a 20' x 30' apron stretching from St. Albans Drive to the dwelling. A concrete walk leads from the driveway to the front door of the main dwelling. Staff concluded that the property is well-landscaped with a "wide array" of mature trees and various shrubs and flowers. *Id.*, p. 2. The front of the dwelling (facing the corner of St. Albans and Rossmore Drives) is shown in a photograph from the Technical Staff Report (Exhibit 14, Attachment 2) on the following page.

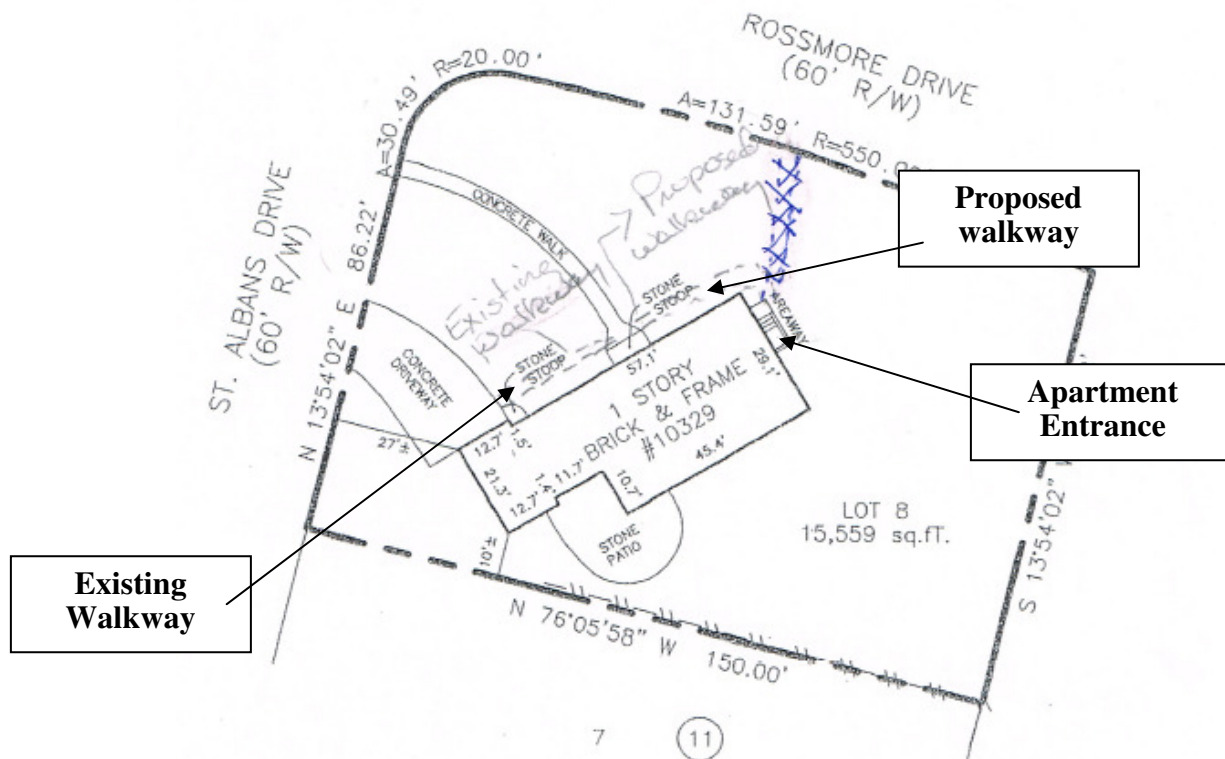
Technical Staff defined the surrounding neighborhood bounded by I-270 on the north, Cheshire Terrace to the east, Cheshire Drive to the south, and St. Albans Drive to the west, which is shown on an aerial photograph from the Technical Staff Report reproduced on page 5. Staff characterizes the area as developed primarily with single-family detached homes; there is one other approved accessory apartment that is still active. Exhibit 14, p. 3. DHCA reports that there are three accessory apartments in the area; however, that may include special exceptions outside the neighborhood as defined by Staff. Exhibit 17.



The Hearing Examiner agrees with Technical Staff's delineation and characterization of the neighborhood.

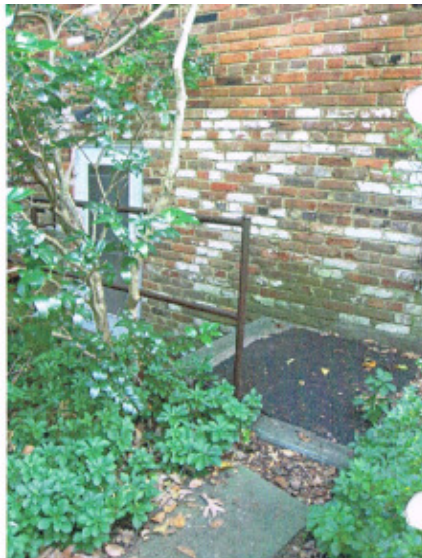
B. The Proposed Use

The Petitioner is seeking a special exception to allow an accessory apartment of approximately 550 square feet of floor area, located in the basement level of the existing home. Exhibit 14, p. 3. The Petitioner will occupy the main dwelling and will rent the basement apartment. A walkway leads from the driveway to the main door, but does not extend to the entrance of the accessory apartment on the side of the dwelling. The Petitioner testified that he will install a walkway consisting of stone pavers at the location shown on the revised site plan, below (Exhibit 4; T. 11):²



² The Petitioner initially proposed that the walkway to the accessory apartment lead directly from the apartment's entrance to Rossmore Drive where his tenants currently park. The Housing Inspector testified, however, that the preferred location would be an extension of the existing concrete walkway leading from the driveway to the main entrance to encourage the tenants to park in the driveway rather than the street. The area on the plan above hatched in blue is the walkway originally proposed by Petitioner, which is intended to be crossed out. The proposed walkway is shown with dotted lines in pencil and labeled on the site plan (Exhibit 4). T. 9-11.

Photographs of the entrance to the apartment on the northeast side of the dwelling indicate that the entrance is screened from the front, side and rear of the home by existing landscaping (Exhibit 9(b)-(d)):



Stoop going down
to the apt. entrance

Exhibit 9(b)



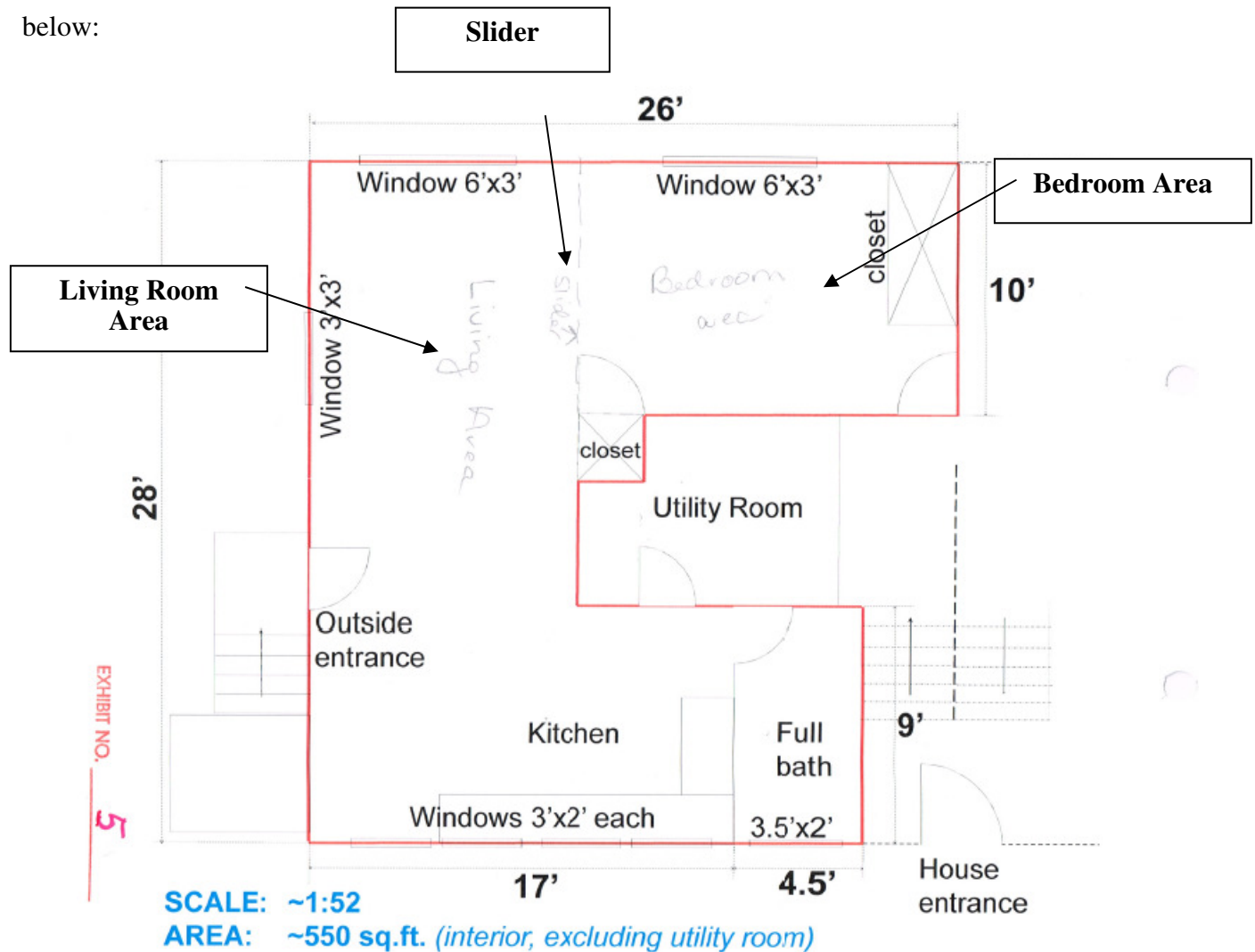
Exhibit 9(c)



Exhibit 9(d)

The apartment will consist of a full kitchen, bathroom, and combined living room/sleeping area (separated by a slider), as shown on the floor plan submitted by the Petitioner (Exhibit 5, T. 15)

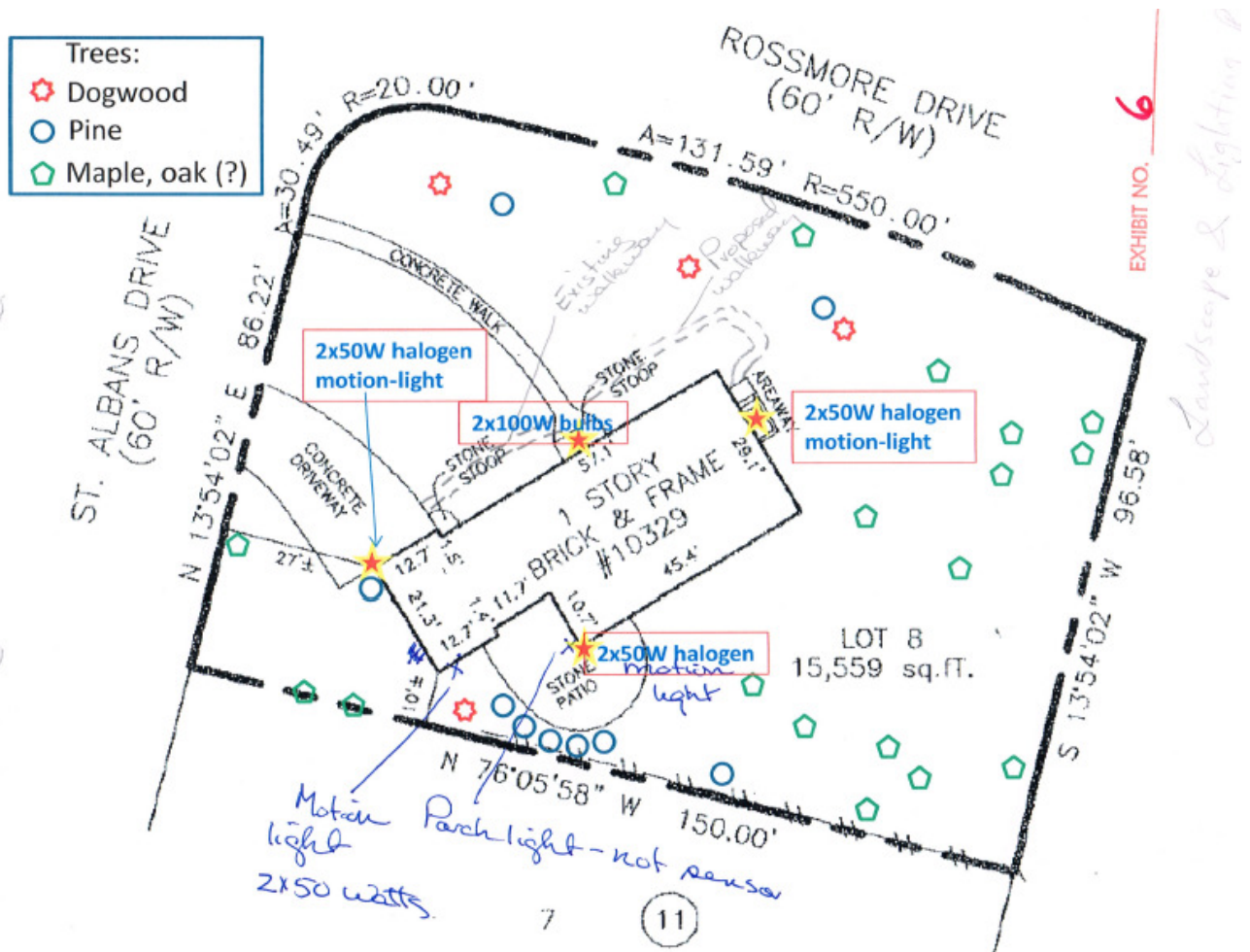
below:



Staff advises that the major doorways are illuminated at an “appropriate residential level.” Exhibit 14, p. 4. The Petitioner testified that there are four double 50-watt motion-sensor lights, one of which is located at the entrance to the accessory apartment. The remaining sensor lights are located above the patio and on the south- and northwest corners of the home. Two 100-watt lights illuminate the main entrance to the dwelling and there is an additional light over the patio. Exhibit 5.

As already noted, Technical Staff found that the property is “well landscaped” with existing mature trees in addition to shrubs and flowers. Exhibit 14, p. 2. A copy of the lighting and

landscape plan submitted by the Petitioner (Exhibit 5) is shown below:



Technical Staff concluded that the proposed use will not adversely impact traffic or parking conditions in the area (Exhibit 14, p. 5):

The proposed accessory apartment within the existing single-family detached unit generates one additional (or two total, including the house) peak hour vehicular trips within both the weekday morning peak period (6:30 to 9:30 a.m.) and the evening peak period (4:00 to 7:00 p.m.). A traffic study is not required to satisfy LATR because the proposed land use generates fewer than 30 peak-hour trips within the weekday morning and evening peak periods.

Although a development located in the North Bethesda Policy Area must mitigate 25% of their new site-generated vehicular trips, PAMR mitigation is not required because the proposed accessory apartment generates fewer than three new peak-hour trips.

Staff also concluded that the driveway may accommodate at least three vehicles; the Housing Inspector determined that the driveway may accommodate up to four vehicles side by side, in addition to a one-car garage. Exhibits 14 and 15. Both report that on-street parking is permitted and available. *Id.*

Technical Staff recommended approval of the petition with the following conditions of approval (Exhibit 14, p. 2):

1. All evidence, testimony and exhibits of record shall bind the petitioner.
2. The Applicant must submit the property deed for the record at the public hearing before the Hearing Examiner.
3. Prior to the issuance of an accessory apartment license by the Department of Housing and Community Affairs, the Applicant must comply with the requirements of DHCA's preliminary housing inspection.
4. Per the findings of DHCA's preliminary housing inspection and Section 29-19 of the Montgomery County Code, maximum occupancy is limited to: a) no more than two unrelated individuals who live and cook together as a single housekeeping unit, or b) up to the number of persons specified in the housing inspection who live and cook together as a single housekeeping unit and are related by blood, marriage, or adoption.
5. Per the provisions of Section 59-G-2.00(b)(1) of the Montgomery County Zoning Ordinance (see Appendix), the Applicant must occupy one of the dwelling units on the lot on which the accessory apartment is located.

The Housing Inspector inspected the property on December 18, 2012, and made the following findings (Exhibit 15):

1. The unit measures 451 square feet of habitable space. Based on square footage requirements this would allow for 2 unrelated adults or a family of 3 to reside in the proposed Accessory Apartment.
2. The driveway will accommodate up to 4 vehicles side by side. There is a 1 car garage attached to house [sic]. On street parking is also available.
3. A walkway to the proposed Accessory Apartment must be installed and maintained in good, serviceable and safe condition.
4. A 36 inch [sic] clearance is required around the electrical panel box located in the kitchen of the proposed Accessory Apartment.
5. All circuits in the electrical panel box must be properly labeled.

6. The refrigerator must be relocated with a dedicated 20 amp circuit and all appropriate permits must be obtained and finalized.
7. The proposed Accessory Apartment must have a standard interior lockable door to provide privacy from the main portion of the house.
8. The light fixture in the utility must be in safe condition and good repair.
9. A hard-wired with battery back up smoke detector must be properly installed in the proposed Accessory Apartment. All appropriate permits must be obtained and finalized.
10. The damaged carpet located in the living area of the proposed accessory apartment must be repaired or replaced in a professional, workmanlike manner to eliminate a tripping hazard.
11. The damaged storm door at the entry to the proposed Accessory Apartment must be replaced in a professional and workmanlike manner.

Upon questioning from the Petitioner, the Housing Inspector testified that the Petitioner may remove the storm door rather than repair it. T. 23. The Petitioner agreed to comply with all conditions of approval recommended in the Technical Staff Report and make all repairs listed by the Housing Inspector in her report. T. 5.

C. Neighborhood Response

One individual, Mr. Richard Chipkin, submitted a letter opposing the request, citing the concern that approval of the petition would serve as a precedent for increased density in the single-family neighborhood. He also expressed the belief that approval would burden schools, impact already strained traffic conditions, and unfavorably affect property values. Exhibit 13. No individuals appeared to testify at the public hearing.

D. The Master Plan

The property lies within the geographic area covered by the *1992 North Bethesda/Garrett Park Master Plan* (Master Plan or Plan). The Master Plan confirmed the R-90 zoning for the property and set goals that support “special exception uses that contribute to the housing objectives” of the Plan. *Plan*, p. 37. The Plan states that its goals for housing are to: “protect and reinforce the

integrity of existing residential neighborhoods” and “preserve and increase the variety of housing stock, including affordable housing.” *Id.*, p. 33. The Plan also established the following criteria for approving special exceptions:

- Avoid excessive concentration of special exception and other nonresidential land uses along major highway corridors.
- Avoid over-concentration of commercial service or office-type special exceptions in residential communities.
- Protect major highway corridors and residential communities from incompatible design of special exception uses. *Id.*, p. 38.

Technical Staff determined that the proposed accessory apartment met the goals of the master plan because these uses are “representative of affordable housing.” It found that the special exception criteria were not applicable to the petition because it is not located along a major highway and is not a commercial or office use. Exhibit 14, pp. 4-5.

III. SUMMARY OF HEARING

Testimony at the public hearing was presented by the Petitioner and Ms. Lynn McCreary, Housing Inspector for the Department of Housing and Community Affairs, as follows:

Mr. Emilios Dimitriadis:

Petitioner executed an affidavit of posting (Exhibit 19), and submitted a copy of his deed. Exhibit 20. He adopted the findings in the Technical Staff Report (Exhibit 14) as Petitioner’s own evidence. T. 5-6. He also agreed to meet all the conditions set forth in the Technical Staff Report and the Housing Inspector’s report. T. 5. At the Hearing Examiner’s request, he submitted a letter from Mr. Sokratis Dimitriadis, listed on the deed as co-owner of the property, consenting to the application and agreeing to be bound by all conditions of approval. Exhibit 21.

Mr. Dimitriadis identified the plans in the file, and modified the Site Plan and Landscape and Lighting Plan (Exhibits 4 and 6, respectively) to show a proposed walkway leading from the main

entrance to the apartment entrance on the northeast side of the dwelling. T. 11-12, 14-15. He plans to use a double width of 16-inch square pavers for the path, with approximately 6 inches of gravel on each side. He testified that his tenants usually use on-street parking along Rossmore Drive, but he encourages them to use the driveway. T. 10-12. Petitioner identified the photographs of his home included in Exhibit 9. T. 6-8. According to him, there is always on-street parking available and no permit is required. T. 23-24.

Housing Code Inspector Lynn McCreary:

Housing Code Inspector, Lynn McCreary, testified that she inspected the premises and that her findings are set forth in her report of December 18, 2012 (Exhibit 15). She described the findings set forth in her report and recommended that the walkway to the apartment extend from the existing concrete walkway leading from the driveway to the main dwelling. T. 10, 20-24. She identified photographs she took of the premises (Exhibit 18, T. 24-26) and stated that the apartment is considered to be a one-room efficiency because only a slider separates the bedroom from the living area and kitchen. T. 15. She also testified that the damaged storm door may be removed, but if it remains it must be repaired. T. 23.

IV. FINDINGS AND CONCLUSIONS

A special exception is a zoning device that authorizes certain uses provided that pre-set legislative standards are met, that the use conforms to the applicable master plan, and that it is compatible with the existing neighborhood. Each special exception petition is evaluated in a site-specific context because a given special exception might be appropriate in some locations but not in others. The zoning statute establishes both general and specific standards for special exceptions, and the Petitioner has the burden of proof to show that the proposed use satisfies all applicable general and specific standards. Technical Staff concluded that Petitioner will have satisfied all the requirements to obtain the special exception, if they comply with the recommended conditions

(Exhibit 14).

Weighing all the testimony and evidence of record under a “preponderance of the evidence” standard (Code §59-G-1.21(a)), the Hearing Examiner concludes that the instant petition meets the general and specific requirements for the proposed use, subject to the conditions set forth in Part V, below.

A. Standard for Evaluation

The standard for evaluation prescribed in Code § 59-G-1.2.1 requires consideration of the inherent and non-inherent adverse effects on nearby properties and the general neighborhood from the proposed use at the proposed location. Inherent adverse effects are “the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations.” Code § 59-G-1.2.1. Inherent adverse effects, alone, are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are “physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site.” *Id.* Non-inherent adverse effects, alone or in conjunction with inherent effects, are a sufficient basis to deny a special exception.

Technical Staff have identified seven characteristics to consider in analyzing inherent and non-inherent effects: size, scale, scope, light, noise, traffic and environment. For the instant case, analysis of inherent and non-inherent adverse effects must establish what physical and operational characteristics are necessarily associated with an accessory apartment. Characteristics of the proposed accessory apartment that are consistent with the “necessarily associated” characteristics of accessory apartments will be considered inherent adverse effects, while those characteristics of the proposed use that are not necessarily associated with accessory apartments, or that are created by unusual site conditions, will be considered non-inherent effects. The inherent and non-inherent effects thus identified must then be analyzed to determine whether these effects are acceptable or

would create adverse impacts sufficient to result in denial.

Technical Staff lists the following inherent characteristics of accessory apartments (Exhibit 14, p. 7):

- 1) The existence of the apartment as a separate entity from the main living unit but sharing a party wall with the main unit;
- 2) The provision within the apartment of the necessary facilities and spaces and floor area to qualify as a habitable space under the Building Code;
- 3) Provision of a separate entrance and sufficient lighting;
- 4) Provision of sufficient parking;
- 5) The existence of an additional household on the site; and
- 6) Additional activity from that household, including potential for additional noise from that additional household.

The Hearing Examiner concludes that, in general, an accessory apartment has characteristics similar to a single-family residence, with only a modest increase in traffic, parking and noise that would be consistent with a larger family occupying a single-family residence. Thus, the inherent effects of an accessory apartment would include the fact that an additional resident (or residents) will be added to the neighborhood, with the concomitant possibility of an additional vehicle or two.

Technical Staff found that there were no non-inherent impacts associated with this petition because “the size, scale, and scope of the requested use are minimal, and that any noise, traffic and disruption, or any other environmental impacts associated with the use would be slight.” *Id.* Staff further found that there are no unusual characteristics associated with this property. Having no evidence to the contrary, the Hearing Examiner agrees with Technical Staff and so finds.

B. General Conditions

The general standards for a special exception are found in Zoning Code §59-G-1.21(a). The Technical Staff report, the Housing Code Inspector’s report, the exhibits in this case and the testimony at

the hearing provide ample evidence that the general standards would be satisfied in this case.

Sec. 59-G-1.21. General conditions.

§5-G-1.21(a) *-A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:*

(1) Is a permissible special exception in the zone.

Conclusion: An accessory apartment is a permissible special exception in the R-90 Zone, pursuant to Code § 59-C-1.31.

(2) Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.

Conclusion: The proposed use complies with the specific standards set forth in § 59-G-2.00 for an accessory apartment, as outlined in Part C, below.

(3) Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the Commission. Any decision to grant or deny special exception must be consistent with any recommendation in a master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.

Conclusion: Technical Staff found that the proposed use was substantially consistent with the 1992 North Bethesda/Garrett Park Master Plan because the plan reaffirmed the R-90 Zone for the subject property and the use is permitted by special exception in that zone. Staff also determined that the petition furthers the Plan's goal to provide a variety of housing options in the area and that none of the other guidelines for special exceptions apply to this property or use. The Hearing

Examiner agrees with this analysis and further finds that the use.

- (4) *Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses.*

Conclusion: The accessory apartment will be located in an existing dwelling and will not require any external changes, except the installation of a stone walkway to the apartment entrance. The property therefore will maintain its residential character. There is adequate parking both on-street and in the driveway and only one additional accessory apartment in the defined neighborhood. The Hearing Examiner concludes that the petition meets this standard.

- (5) *Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: Staff has characterized the nature of the impacts from this use as “minimal”. Given that no external changes are being made other than the walkway, the Hearing Examiner finds that the petition meets this standard.

- (6) *Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: The Hearing Examiner finds that the petition will cause no objectionable noise, vibrations, etc., due to the minimal impact of the use, the fact that there will be no external changes, and that there is sufficient on-street and off-street parking.

- (7) *Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendations of a master or sector plan do not alter the nature of an area.*

Conclusion: Technical Staff advises that there is only one other accessory apartment special exception within the surrounding area. The Hearing Examiner finds that the proposed special exception will not increase the number, scope, or intensity of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area, as did Technical Staff.

- (8) *Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: The evidence supports the conclusion that the proposed use would not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site.

- (9) *Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities.*

Conclusion: Technical Staff indicates that the subject site will be adequately served by existing public services and facilities (Exhibit 14, p. 10), and the evidence supports this conclusion.

- (A) *If the special exception use requires approval of a preliminary plan of subdivision, the Planning Board must determine the adequacy of public facilities in its subdivision review. In that case, approval of a preliminary plan of subdivision must be a condition of the special exception.*
- (B) *If the special exception:*
- (i) does not require approval of a new preliminary plan of subdivision; and*
 - (ii) the determination of adequate public facilities for the site is not currently valid for an impact that is the same as or greater than the special exception's impact;*
- then the Board of Appeals or the Hearing Examiner must determine the adequacy of public facilities when it considers the special exception application. The Board of Appeals or the Hearing Examiner must consider whether the available public facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when*

the application was submitted.

Conclusion: The special exception sought in this case would not require approval of a preliminary plan of subdivision, and there is no currently valid determination of the adequacy of public facilities for the site, taking into account the impact of the proposed special exception. Therefore, the Board must consider whether the available public facilities and services will be adequate to serve the proposed development under the applicable Growth Policy standards. These standards include Local Area Transportation Review (LATR) and Policy Area Mobility Review (PAMR). As indicated in Part II. B. of this report, Transportation Planning Staff did do such a review, and concluded that the proposed accessory apartment use would add one additional trip during each of the peak-hour weekday periods. Exhibit 14, p. 5. Since the existing house, combined with the proposed accessory apartment, would generate fewer than 30 total trips in the weekday morning and evening peak hours, the requirements of the LATR are satisfied without a traffic study. As the proposed use is estimated to generate only one additional peak-hour trip, PAMR is also satisfied. Therefore, the Transportation Staff concluded, as does the Hearing Examiner, that the instant petition meets all the applicable Growth Policy standards.

(C) With regard to public roads, the Board or the Hearing Examiner must further find that the proposed development will not reduce the safety of vehicular or pedestrian traffic.

Conclusion: Based on the evidence of record, especially the Technical Staff's conclusion that that the proposed accessory apartment "will not reduce the safety of vehicular or pedestrian traffic," the Hearing Examiner finds that the petition meets this standard. Exhibit 14, p. 10.

C. Specific Standards

The testimony and the exhibits of record, especially the Technical Staff Report (Exhibit 14), provide sufficient evidence that the specific standards required by Section 59-G-2.00 are satisfied in this case, as described below.

Sec. 59-G-2.00. Accessory apartment.

A special exception may be granted for an accessory apartment on the same lot as an existing one-family detached dwelling, subject to the following standards and requirements:

(a) Dwelling unit requirements:

- (1) Only one accessory apartment may be created on the same lot as an existing one-family detached dwelling.*

Conclusion: Only one accessory apartment is proposed.

- (2) The accessory apartment must have at least one party wall in common with the main dwelling on a lot of one acre (43,560 square feet) or less. On a lot of more than one acre, an accessory apartment may be added to an existing one-family detached dwelling, or may be created through conversion of a separate accessory structure already existing on the same lot as the main dwelling on December 2, 1983. An accessory apartment may be permitted in a separate accessory structure built after December 2, 1983, provided:*
- (i) The lot is 2 acres or more in size; and*
 - (ii) The apartment will house a care-giver found by the Board to be needed to provide assistance to an elderly, ill or handicapped relative of the owner-occupant.*

Conclusion: The apartment is located in the basement of an existing house, and therefore shares a wall in common, as required for a lot of this size (under an acre).

- (3) An addition or extension to a main dwelling may be approved in order to add additional floor space to accommodate an accessory apartment. All development standards of the zone apply. An addition to an accessory structure is not permitted.*

Conclusion: No new addition or extension of the main dwelling is proposed. The accessory apartment will be located in an existing dwelling.

- (4) The one-family detached dwelling in which the accessory apartment is to be created or to which it is to be added must be at least 5 years old on the date of application for special exception.*

Conclusion: Records of the Maryland State Department of Assessments and Taxation indicate that the house was built in 1959. Exhibit 16. Based on this evidence, the proposed use meets this requirement.

(5) The accessory apartment must not be located on a lot:

- (i) That is occupied by a family of unrelated persons; or*
- (ii) Where any of the following otherwise allowed residential uses exist: guest room for rent, boardinghouse or a registered living unit; or*
- (iii) That contains any rental residential use other than an accessory dwelling in an agricultural zone.*

Conclusion: The proposed use will not violate any of the provisions of this subsection.

(6) Any separate entrance must be located so that the appearance of a single-family dwelling is preserved.

Conclusion: Access to the accessory apartment will preserve the appearance of a one-family dwelling. The apartment entrance will be separate from the main entrance on the side of the home. The apartment entrance has the appearance of a typical basement entry to a one-family home. There will thus be no change to the home's residential appearance.

(7) All external modifications and improvements must be compatible with the existing dwelling and surrounding properties.

Conclusion: No external improvements are planned by Petitioner, with the minor exception of the addition of a walkway from the main entrance to the entrance of the accessory apartment. The Hearing Examiner finds that this minor change from existing conditions is compatible with the existing dwelling and surrounding properties.

(8) The accessory apartment must have the same street address (house number) as the main dwelling.

Conclusion: The accessory apartment will have the same address as the main dwelling.

(9) The accessory apartment must be subordinate to the main dwelling. The floor area of the accessory apartment is limited to a maximum of 1,200 square feet.

Conclusion: SDAT records reveal that the enclosed area of the single-family dwelling is 1,260 square feet and the accessory apartment is 550 feet according to the submitted floor plan. Based on this evidence, the accessory apartment will be subordinate to the main dwelling. Exhibit 14, p. 15.

59-G § 2.00(b) Ownership Requirements

- (1) *The owner of the lot on which the accessory apartment is located must occupy one of the dwelling units, except for bona fide temporary absences not exceeding 6 months in any 12-month period. The period of temporary absence may be increased by the Board upon a finding that a hardship would otherwise result.*

Conclusion: The Petitioner will live in the main dwelling unit on the property.

- (2) *Except in the case of an accessory apartment that exists at the time of the acquisition of the home by the Petitioner, one year must have elapsed between the date when the owner purchased the property (settlement date) and the date when the special exception becomes effective. The Board may waive this requirement upon a finding that a hardship would otherwise result.*

Conclusion: According to Petitioner's deed (Exhibit 20) and the Maryland Tax Records (Exhibit 16), Petitioner purchased the property in 2005. The one-year rule has therefore been satisfied.

- (3) *Under no circumstances, is the owner allowed to receive compensation for the occupancy of more than one dwelling unit.*

Conclusion: The Petitioner will receive compensation for only one dwelling unit as a condition of the special exception.

- (4) *For purposes of this section owner means an individual who owns, or whose parent or child owns, a substantial equitable interest in the property as determined by the Board.*

Conclusion: The Petitioner and his brother own the property. Exhibit 20. The Petitioner's brother, Mr. Sokratis Dimitriadis has consented to the petition and has agreed to abide by all conditions of approval.

- (5) *The restrictions under (1) and (3) above do not apply if the accessory apartment is occupied by an elderly person who has been a continuous tenant of the accessory apartment for at least 20 years.*

Conclusion: Not applicable.

59-G § 2.00(c) Land Use Requirements

- (1) The minimum lot size must be 6,000 square feet, except where the

minimum lot size of the zone is larger. A property consisting of more than one record lot, including a fraction of a lot, is to be treated as one lot if it contains a single one-family detached dwelling lawfully constructed prior to October, 1967. All other development standards of the zone must also apply, including setbacks, lot width, lot coverage, building height and the standards for an accessory building in the case of conversion of such a building.

Conclusion: The subject lot is approximately 15,559 square feet in size, and therefore satisfies this requirement. According to Technical Staff, the subject property conforms to all applicable development standards of the zone. Exhibit 14, p. 6. The table shown from the Technical Staff report summarizes the relevant development standards for the application. *Id.*

| | <i>Required/Allowed</i> | <i>Provided</i> |
|--|-------------------------|--------------------------------------|
| Minimum Lot Area (square feet) | 9,000 sq. ft. | 15,559 sq. ft. |
| Minimum lot width (feet) at front building line for 1-family detached dwelling | 75 feet | 105 feet |
| Minimum lot width (feet) at existing street line | 25 feet | 86 feet |
| Minimum street setback --St. Albans Drive --Rossmore Drive | 30 feet 30 feet | * Approx. 27 feet Approx. 32 feet |
| Minimum Setback from adjoining lot | | |
| --One side | 8 feet | 10 feet |
| --Sum of both sides | 25 feet | 42 feet |
| --Rear | 25 feet | 52 feet |
| Maximum Building Height (feet) | 30 feet or 2.5 stories | 1-story (Approx. 18 feet) |
| Maximum Coverage (%) | 30% | Approx. 13% |

*Records show that Lot 8 was platted (Plat No. 5134) and approved in 1958 as part of the Wildwood Manor Subdivision. The street setback requirement for single-family detached dwellings in the R-90 zone was 25 feet, instead of 30 feet as currently required by the Zoning Ordinance.

- (2) *An accessory apartment must not, when considered in combination with other existing or approved accessory apartments, result in excessive concentration of similar uses, including other special exception uses, in*

the general neighborhood of the proposed use(see also section G-1.21 (a)(7) which concerns excessive concentration of special exceptions in general).

Conclusion: As previously stated in this report, the Hearing Examiner concludes that the proposed special exception will not create an excessive concentration of similar uses since there is only one other accessory apartment in the neighborhood.

(3) Adequate parking must be provided. There must be a minimum of 2 off-street parking spaces unless the Board makes either of the following findings:

- (i) More spaces are required to supplement on-street parking; or*
 - (ii) Adequate on-street parking permits fewer off-street spaces.*
- Off-street parking spaces may be in a driveway but otherwise must not be located in the yard area between the front of the house and the street right-of-way line.*

Conclusion: Staff found that there is sufficient parking, both on-street and off-street, to support the use. The driveway and attached garage may accommodate three vehicles and on-street parking is available on Rossmore and St. Albans Drives. Exhibit 14, p. 13.

D. Additional Applicable Standards

Not only must an accessory apartment comply with the zoning requirements as set forth in 59-G, it must also be approved for habitation by the Department of Housing and Community Affairs. As discussed in Part II. B. of this Report, the Housing Code Inspector's report (Exhibit 15) found that certain modifications were needed, and that occupancy must be limited to a family of three or two unrelated individuals.

V. RECOMMENDATION

Based on the foregoing analysis, I recommend that the Petition of Emilios Dimitriadis, BOA No. S-2853, which seeks a special exception for an accessory apartment to be located at 10329 St. Albans Drive, Bethesda, Maryland, be GRANTED, with the following conditions:

1. The Petitioner is bound by their testimony, representations and exhibits of record;

2. The Petitioner must comply with all of the conditions set forth in the Memorandum of Lynn McCreary, Housing Code Inspector, Division of Housing and Code Enforcement dated October 26, 2012 (Exhibit 15):
 1. A walkway to the proposed accessory apartment must be installed and maintained in good, serviceable and safe condition.
 2. A 36-inch clearance is required around the electrical panel box located in the kitchen of the accessory apartment.
 3. All circuits in the electrical panel box must be properly labeled.
 4. The refrigerator must be relocated with a dedicated 20-amp circuit and all appropriate permits must be obtained and finalized.
 5. The accessory apartment must have a standard interior lockable door to provide privacy from the main portion of the house.
 6. The light fixture in the utility room must be in safe condition and good repair.
 7. A hard-wired with battery back up smoke detector must be properly installed in the accessory apartment.
 8. The damaged carpet located in the living area of the accessory apartment must be repaired or replaced in a professional, workmanlike manner to eliminate a tripping hazard.
 9. The damaged storm door at the entry of the accessory apartment must be either removed or replaced in a professional, workmanlike manner.
3. Occupancy must be limited to a family of three or two unrelated individuals and Petitioner must comply with any other directions of the Housing Code Inspectors to ensure safe and code-compliant occupancy;
4. Petitioner must occupy one of the dwelling units on the lot on which the accessory apartment is located;
5. Petitioner must not receive compensation for the occupancy of more than one dwelling unit; and
6. Petitioner must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the special exception premises and operate the special exception as granted herein. Petitioner shall at all times ensure that the special exception use and premises comply with all applicable codes

(including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements.

Dated: February 13, 2013

Respectfully submitted,

A handwritten signature in black ink, consisting of a stylized 'L' and 'R' followed by a long horizontal line.

Lynn A. Robeson
Hearing Examiner